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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/781,239

02/18/2004

Jeffrey T. Mauch

10499-596US

2354

570

7590

08/25/2005

AKIN GUMP STRAUSS HAUER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103

EXAMINER

PAHNG, JASON Y

ART UNIT

PAPER NUMBER

3725

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,239	<b>Applicant(s)</b> MAUCH ET AL	
	<b>Examiner</b> Jason Y. Pahng	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/19/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Group III, claims 16-25, in the reply filed on July 28, 2005 is acknowledged.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Krishnamurthy (US 6,401,657).

With regard to claim 16, Krishnamurthy discloses a food feeder including:

1. a feed tube (12 and 16) extending from a top lid wall (16, Figure 1);
2. the feed tube (30) including a continuous inner feed surface that defines a feed cavity;
3. a movable gate (24) positioned within the feed cavity; and
4. the movable gate (24) being movable within the feed cavity between an open position (when the first coil is open) and a compacting position (when the first coil is closed).

With regard to claim 24, Krishnamurthy discloses a sub-feed cavity defined by a compacting surface of the movable gate (24) and at least a portion of the inner feed surface of the feed tube (30).

Claims 16, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Levin et al. (US 4,471,915).

With regard to claim 16, Levin discloses a food processor including:

1. a feed tube (52) extending from a top lid wall (30);
2. the feed tube (52) including a continuous inner feed surface that defines a feed cavity;
3. a movable gate (64) positioned within the feed cavity; and
4. the movable gate (64) being movable within the feed cavity between an open position and a compacting position (Figures 4 and 5).

With regard to claim 17, Levin discloses the feed tube including a slot (54) having an open first end (near 64 in Figure 1) and a closed second end (away from 64 in Figure 1), wherein the slot (54) is at least partially exposed to the feed cavity between the first and second ends. Levin discloses a hub (60) being removably positionable within the slot (54) and the hub (60) is secured to the movable gate (64).

With regard to claim 18, Levin discloses a movable gate (64) pivotable within the feed cavity relative to the slot (54) and the hub (60) is pivotable within the slot (54).

Claims 16, 23, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard (US 4,397,427).

With regard to claim 16, Howard discloses a food processor including:

1. a feed tube (14) extending from a top lid wall (8);
2. the feed tube (14) including a continuous inner feed surface that defines a feed cavity;
3. a movable gate (32) positioned within the feed cavity; and
4. the movable gate (32) being movable within the feed cavity between an open position and a compacting position (column 4, lines 44-47).

With regard to claim 23, Howard discloses a food pusher (30) being slideable relative to the feed tube (14) in first and second directions (Figure 2). Howard discloses a food pusher (30) generally cylindrically shaped (Figure 4).

With regard to claim 24, Howard discloses a sub-feed cavity defined by a compacting surface of the movable gate (32) and at least a portion of the inner feed surface of the feed tube (Figure 2).

With regard to claim 25, Howard discloses a food pusher (30) removably positionable in the feed cavity. The food pusher substantially fills the sub-feed cavity when the food pusher is stored in the sub-feed cavity.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin et al. (US 4,471,915) in view of Welke (US 774,217). Howard's movable gate including the hub is not biased toward a compacting position. In a closely related art, Welke discloses a movable gate (E) biased toward a compacting position in order to automate safely positioning food item for processing. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howard with a movable gate biased toward a compacting position in order automate safely positioning food item for processing, as taught by Welke.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (US 4,397,427) in view of Welke (US 774,217). Howard's movable gate is not biased toward a compacting position. In a closely related art, Welke discloses a movable gate (E) biased by a torsion spring (G, Figure 2) toward a compacting position in order to better hold food items. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howard with a movable gate biased by a torsion spring toward a compacting position in order to better hold food items, as taught by Welke.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (US 4,397,427) in view of Welke (US 774,217) as applied above, further in view of Gage (US 751,159). Howard (as modified) does not disclose a spring secured at one end to a feed tube. In a closely related art, Gage discloses a spring secured at one end (26) to a feed tube (at 27) in order to provide a compact arrangement of the spring within the feed tube. Therefore, it would have been obvious to one skilled in the art at the time the

invention was made to provide Howard (as modified) with a spring secured at one end to a feed tube in order to provide a compact arrangement of the spring within the feed tube, as taught by Gage.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Y. Pahng whose telephone number is 571 272 4522. The examiner can normally be reached on 9:00 AM - 7:00 PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571 272 4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JYP

  
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